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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,593	10/01/2003	Ronald L. Brookshire	1088.008	7971
7590	10/18/2005		EXAMINER	
John L. Rogitz, Esq. ROGITZ & ASSOCIATES Suite 3120 750 "B" Street San Diego, CA 92101			KRECK, JOHN J	
			ART UNIT	PAPER NUMBER
			3673	
			DATE MAILED: 10/18/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/676,593	BROOKSHIRE ET AL.
Examiner	Art Unit	
John Kreck	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 and 5-20 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____.

## DETAILED ACTION

1. In view of the Order from the Board of Patent Appeals and Interferences mailed on 7/25/05, PROSECUTION IS HEREBY REOPENED. Claim 10, pending since the application was filed, was never properly rejected. A rejection of claim 10 appears below, along with rejections already of record.

To avoid abandonment of the application, Applicant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then Applicant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



HEATHER SHACKELFORD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

### ***Claim Rejections - 35 USC § 102 and 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3, and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Adkins, II (United States Patent number 5,131,888).

Adkins shows the fan module; at least one fan (12) in the module; at least one battery (18); and solar panel (15). Adkins also shows the fan pipe ("housing") and flanges. Adkins fails to explicitly disclose the fan disposed between the flanges as called for in claim 1. It is noted that Adkins discloses that reference number 13 designates an "exhaust fan housing" with flanges at either end. The accepted meaning of the term "housing" indicates that the fan should be located within; thus it is believed that Adkins intends for the fan to be between the flanges; alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to have made the fan between the flanges, so that the housing (i.e. flanges) would protect the fan from damage.

Adkins also shows the DC fan as called for in claim 2.

Adkins also shows the axial fan as called for in claim 3.

Adkins also shows the array as called for in claim 7.

2. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins, II (U.S. Patent number 5,131,888) in view of Staler, et al. (U.S. Patent number 4,453,119).

Adkins discloses a rechargeable 12 V DC battery and solar charger, but fails to explicitly disclose the lead acid battery and the voltage controller electrically disposed between the battery and solar panel. It is noted that Adkins fails to disclose the nature of the electrodes and electrolyte in the battery; using the generic term “battery”

Staler teaches that a voltage controller electrically disposed between the battery and solar panel is desirable, in order to keep the voltage on the battery constant as output from the solar panel fluctuates. Staler also teaches 12V lead acid batteries are well known (e.g. col. 3, lines 21-23).

Regarding claim 6; in light of Staler’s teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery with the Adkins device, since Adkins fails to disclose any specific battery type.

Regarding claim 8; in light of Staler’s teaching that voltage controllers are desirable between solar panels and batteries; it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to

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have had a voltage controller; in order to keep the voltage on the battery constant as output from the solar panel fluctuates.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins in view of any one of Finley (United Sates Patent number 776,310); West (United States Patent number 349,549) or Bates (United Sates Patent number 98,833).

Adkins fails to show the support rod. Such support rods are well known and old as evidenced by the cited patents; they are used to strengthen the joint and reduce the number of nuts required. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have a support rod as called for in claim 5.

4. Claims 9, 12, 13, 14, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo, Sr. (United Sates Patent number 5,857,807) in view of Adkins.

Longo teaches the process of extracting gas from a landfill which uses a well pipe and fan.

Adkins teaches a fan module process which includes the steps of energizing and recharging. The Adkins fan is advantageous in that it is inexpensive and portable. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Longo process to have included installing a fan module in the well,

energizing the fan, and recharging the battery as called for in claim 9; since the fan module and solar cell are inexpensive and portable.

Adkins teaches an axial fan as called for in claim 12.

With regards to claim 13; the rate of gas production is deemed to be a matter of engineering design: it would have been obvious to one of ordinary skill in the art at the time of the invention to have operated the fan such that gas would exhaust at 40scfm.

Adkins teaches maintaining 12 volts DC as called for in claim 14.

Regarding independent claim 15:

Longo teaches a system including fan means in communication with a landfill well. Longo fails to teach the battery and solar power means.

Adkins teaches a fan system including battery and solar power. The Adkins fan is advantageous in that it is inexpensive and portable.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins process to have battery means and solar means as called for in claim 15; since the fan module with battery and solar cell are inexpensive and portable.

Adkins teaches the axial fan as called for in claim 17.

Adkins teaches the pipe and flanges as called for in claim 18.

5. Claims 11, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo, Sr. (U.S. Patent number 5,857,807) and Adkins, II (U.S. Patent number 5,131,888) and further in view of Staler, et al. (U.S. Patent number 4,453,119).

Adkins discloses a rechargeable 12 V DC battery and solar charger, but fails to explicitly disclose the lead acid battery and the voltage controller electrically disposed between the battery and solar panel. It is noted that Adkins fails to disclose the nature of the electrodes and electrolyte in the battery; using the generic term "battery"

Staler teaches that a voltage controller electrically disposed between the battery and solar panel is desirable, in order to keep the voltage on the battery constant as output from the solar panel fluctuates. Staler also teaches 12V lead acid batteries are well known (e.g. col. 3, lines 21-23).

Regarding claim 11; in light of Staler's teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery, since Adkins fails to disclose any specific battery type.

Regarding claim 16; in light of Staler's teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery, since Adkins fails to disclose any specific battery type.

Regarding claim 20; in light of Staler's teaching that voltage controllers are desirable between solar panels and batteries; it would have been obvious to one of

ordinary skill in the art at the time of the invention to have modified the Adkins device to have had a voltage controller; in order to keep the voltage on the battery constant as output from the solar panel fluctuates.

6. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo and Adkins and further in view of any one of Finley (United States Patent number 776,310); West (United States Patent number 349,549) or Bates (United States Patent number 98,833)

Adkins fails to show the support rod. Such support rods are well known and old as evidenced by the cited patents; they are used to strengthen the joint and reduce the number of nuts required. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have a support rod as called for in claims 10 and 19.

### ***Response to Arguments***

#### **(a) Claim 1 rejected under 35 USC 102 over Adkins II.**

Applicant asserts that claim 1 recites structure that is not taught in Adkins: that "the fan module is configured for engaging a landfill well" (brief section 7a, third paragraph). This language is not found in any claim. The closest limitation is "the fan module configured for communicating with methane..." (see claim 1, line 2). Applicant has not identified any structure absent from the Adkins reference which makes the fan module "configured" as claimed. The claims are given their broadest reasonable

interpretation: the limitations drawn to “landfill gas extraction system”; “for communicating with methane in the landfill”; and “for mating with respective flanges of a landfill well” are given weight as intended use only. It is noted that Applicant did not raise this argument previously in prosecution.

With regards to the limitation “the fan being disposed between the flanges”; Applicant has argued that the fan shown by Adkins is not between the flanges. This flies in the face of figures 1 and 2 of Adkins, which do not show the fan coplanar with the flange. Figure 3 of Adkins plainly shows that the fan does not extend past the upper flange; therefore, the fan can either be “coplanar with the flange” (as asserted by Applicant) or between the flanges. Flanges, such as shown at 13” in Adkins, are thin and planar. Fans, such as shown at 12 in Adkins, are neither planar nor thin. To accept that the fan is coplanar with the flange, and not between the flanges; one must assume a very thin fan, perfectly aligned with the flange.

**(b) Claims 9 and 15 rejected under 35 USC 103 over Longo, Sr. in view of Adkins II.**

Applicant has argued that the prior art fails to motivate “inexpensive and portable” fans for use in landfills. It is noted that although Longo, sr. teaches a blower in a landfill well, the reference fails to disclose any structure for the blower. One of ordinary skill in the art would have found it obvious to use a fan system as shown by Adins, based on Adkins teaching that “Another objects of the invention is

to provide a solar exhaust fan which is inexpensive and easy to fabricate." (col. 2, line 22)

Assuming, arguendo, that one of ordinary skill in the art would not be motivated to find a "portable" fan for landfill use; it defies logic to assert that one would not be motivated to find an "inexpensive" or "easy to fabricate" fan [it is also observed that the fan has to be put on the landfill somehow; and thus must be transported...a portable fan would seem to be required]. Such motivation is found in the knowledge generally available to those skilled in the art.

Applicant has asserted that "only the present invention has made the critical observation...landfills may lack the electrical infrastructure..." (brief (7)(b) fourth paragraph); however, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

**(c) Claim 1 rejected under 35 USC 103 over Adkins II.**

Applicant has made no substantive arguments nor provided any evidence concerning the obviousness of mounting the fan of Adkins between the flanges.

**(d) Claim 6 and 8 rejected under 35 USC 103 over Adkins II; now over Adkins in view of Staler.**

Applicants arguments are largely moot in view of the new grounds of rejection. It is noted that Applicant has argued that official notice was taken “*of 12 volt batteries and of voltage regulators*” (brief (7)d)). Official notice was taken of “lead acid” batteries and “voltage controllers”. 12 volt batteries are explicitly disclosed by Adkins. The Staler reference provides evidence that lead acid batteries and voltage controllers are well known and desirable. Applicant has argued that there is no suggestion in the prior art to use a lead-acid battery. Since Adkins fails to teach the type of 12 volt battery, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used any common 12V battery. Staler provides evidence that lead acid 12V batteries are common. Applicant has argued that there is no suggestion in the prior art to use a voltage controller. The suggestion is found in Staler; where it is disclosed that it is desirable to keep the voltage levels constant.

(e) **Claim 5** rejected under 35 USC 103 over Adkins II in view of any one of Finley, West, or Bates.

Applicant has argued that there is no suggestion to use support rods with the system shown by Adkins. The motivation to use such rods was stated in the rejection: “*to strengthen the joint and reduce the number of nuts required*”. Such motivation is found in the knowledge generally available to those skilled in the art. It is believed that a *prima facie* case of obviousness has been met. Applicant has failed to provide any evidence of non-obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is 571-272-7042. The examiner can normally be reached on M-F 5:30 am - 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Kreck  
Primary Examiner  
Art Unit 3673

7 September 2005